No. 20280

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

R. B. RANDS, ET UX., APPELLANTS

v.

UNITED STATES OF AMERICA, APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

BRIEF FOR THE APPELLEE

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INDEX

CITATIONS

ases:

Cases cont'd: Page

Statutes:

Miscellaneous:

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OPINIONS BELOW

The opinion of the district court, dated October 16, 1963, denying appellants' motion to amend their notice of appearance, is reported at 224 F.Supp. 305 and is found at pages 35-37 of the record. The court's memorandum of October 12, 1964, deciding the effect of the navigational servitude on just compensation, is found at R. 38-39.

JURISDICTION

The district court had jurisdiction over the condemnati proceedings instituted by the United States under 28 U.S.C. sec. 1358. The judgment, based on the verdict for Tract 2514 and the stipulation as to compensation for Tract 2403, was entered April 1965 (R. 68). The appellants filed their notice of appeal on June 4, 1965 (R. 69). The jurisdiction of this Court rests on 28 U.S.C. sec. 1291.

QUESTIONS PRESENTED

1. Whether the condemnation of land was for a public use in a constitutionally authorized project.

2. Whether lands condemned in the exercise of the navigational servitude must be valued without regard to the potential use of the lands as a port site based upon their riparian location.

STATEMENT

In this condemnation suit, property was taken for construction of the John Day Lock and Dam Project on the Columbia River for multiple purposes of flood control, river improvement and hydroelectric development. Included in the taking were

appellants' lands, described as Tract 2403 containing 121 acres and Tract 2514 containing 139 acres (R. 5, 41). Both tracts are riparian to the Columbia River. The complaint and declaration of taking were filed on August 13, 1963 (R. 82). On the same date, appellants were sent a notice of the filing of the complaint, which further stated (App. A):

> You are further notified that if you have any objection or defense to the taking of your property you are required to serve upon plaintiff's attorneys at the address herein designated within twenty days after personal service of this notice upon you * * * an answer * * * stating all your objections and defenses to the taking of your property. A failure so to serve an answer shall constitute a consent to the taking and to the authority of the Court to proceed to hear the action and to fix the just compensation and shall constitute a waiver of all defenses and objections not so presented.

Appellants filed a notice of appearance and a motion for partial distribution of funds on September 3, 1963 (R. 82). No defense or objection to the taking was stated in the notice of appearance or in the motion (R. 28). On September 27, 1963, appellants filed a motion to permit them to call their notice of appearance an "answer" and to allege defenses and objections to

the taking of their property (R. 31). By its opinion and order, the district court ruled that it was without authority to extend the 20 days allowed by Rule 71A(e) within which to file an answer objecting to the condemnation of property (R. 35-37). The opinion continued (R. 37):

> It is my belief that neither Rule 6(b) nor Rule 60(b), apply to this particular problem. Assuming, however, that such rules apply, United States v. 1108 acres of land, etc., 25 F.R.D. 205, I find that the showing made in support of this motion is insufficient to grant defendants relief under such rules. Furthermore, if I have discretion, I would exercise that discretion against the allowance of the motion for the reason that the defendants made no attempt to raise the question until after a substantial portion of the property had been transferred to the State of Oregon.

Later in the course of the proceedings, the question arose as to whether any element of value attributable to the possible use of the lands taken as a potential port site for future development should be considered. The district court, in its memorandum opinion of October 12, 1964, decided this question in the negative (R. 38-39). Although the land taken was unimproved, the court conceded, arguendo, that "Defendants'

lands border the high water mark of the Columbia River for a considerable distance, and, for the purposes of this opinion, it is conceded that at least one site could be utilized as a port" [1/] (R. 38). The opinion continued (R. 38-39):

> I am unable to distinguish between the value of land as a site for hydroelectric power purposes, the issue before the court in United States v. Twin City Power Co., 350 U.S. 222 (1955), and the value of land as a site for port operations. The successful operation of each depends on the flow of the stream. A port without water is no more susceptible to successful operation than would be a hydroelectric plant without its source of power. It is my belief that the value, if any, for port purposes is subject to the overriding navigational services [sic servitude] of the United States, which permits the appropriation of any such a property right by the United States without compensation. * * *.

At the trial on the issue of just compensation for Tract 2514, the appellants contended that the highest and best use of the property was in part for sand and gravel, in part for

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1/ The concession did not, of course, include the further issues whether adaptability of this particular land for the purpose was so imminent as to affect market value of the land in its then condition.

port site and the remainder for agricultural uses (R. 41). The district court abided by its earlier ruling which eliminated port site value from the consideration of the jury (R. 42). Based on agricultural and sand and gravel uses, appellants' witnesses testified that the value of the tract was between $103,00 and $150,000. The Government, basing its value entirely on agricultural uses, presented witnesses who testified the tract had a value of between $4,980 and $5,660. Among the comparable sales was the sale of that portion of Tract 2514 (52.4 acres) containing the sand and gravel bar to the appellants on October 1961, for $2,500 (R. 45). The jury returned a verdict of $7,000 (R. 66). The appellants made an offer of proof on the value of their lands for a port site (R. 48-65). Included in the offer of proof was an affidavit by a tug boat captain who stated that "I do not think it would be at all unreasonable to pay not less than $50,000 for the Castle Rock port site if the same were for sale" (R. 55). After the jury trial, the appellants and the Government entered into a stipulation that just compensation for Tract 2403 was $2,420 inclusive of interest (R. 67). Judgment was accordingly entered for $9,420 for both tracts, and this appeal followed (R. 68).

SUMMARY OF ARGUMENT

I

The land was taken for public use in a constitutionally authorized project. Since the Government's right to take in this case in plain, it was not an abuse of discretion for the district court to refuse to allow the appellants permission to make a tardily presented answer contesting the Government's right to take. The only justiciable issue that could have been in the case involving the right to take was whether the Congress was acting within its constitutional powers when it authorized the Corps of Engineers to construct the John Day Lock and Dam Project and appellants do not deny this fact. Details of the execution of the constitutionally authorized project, such as how much land is needed, where the boundary line is to be, or whether the land is taken in fee rather than by easement, are legislative questions, not subject to judicial review.

II

The district court correctly excluded port site value as an element of compensation. This case again raises the often litigated issue of how the rule that privately owned riparian lands carry with them no vested right of access to the navigable

stream is to be taken into consideration when determining just compensation. Both United States v. Virginia Electric Co., 365 U.S. 624 (1961), and United States v. Twin City Power Co., 350 U.S. 222 (1956), hold that just as the navigational privilege permits the Government to reduce the value of riparian lands by denying the owner access to the stream without compensation for his loss, it also permits the Government to disregard the value arising from this same fact of riparian location in compensating the owner when fast lands are taken. Persons who have bought ar sold riparian property have consistently been advised by the courts that, as against the United States, riparian rights of access to navigable waters cannot be bought and sold.

Appellants fail in their attempt to distinguish Twin City and Virginia Electric Co. There is no logical distinction between power site value and port site value, as both are controlled by the same underlying concept of value based on riparia location. These cases do not rest on their individual facts as to how speculative or remote the proposed projects were, nor on the degree to which Congress has controlled the subject matter by legislation. Nor is the argument that Congress might have

waived its rights in the navigational servitude or contemplated creating these riparian owners different from others supported by the two statutes which appellants cite. The very long and specific legislative and administrative history of such an intent which was shown in United States v. Gerlach Livestock Co., 339 U.S. 725 (1950), is completely lacking here.

ARGUMENT

I

THE LAND WAS TAKEN FOR PUBLIC USE IN A CONSTITUTIONALLY AUTHORIZED PROJECT

Appellants complain that they were not allowed to file tardily an answer raising their objections to the Government's right to take Tracts 2403 and 2514. It appears from appellants' Motion to Amend, with attached affidavit (R. 31-34), and their brief (pp. 47-48) that they contend the Government is taking more land than it needs for the John Day Lock and Dam, and that such land after the taking will be sold to the State of Oregon which will lease it to the Boeing Company, "a private, profit making company." Reference to the map attached to the declaration of taking shows that where the Government in the case of

Tract 2514 will overflow the entire ownership, it has elected to take the land in fee, rather than only a flowage easement up to the anticipated high water mark (R. 20). The same is true for Tract 2403, except that the high water contour does not include the two far corners of that tract, and again the Government has elected to take the entire ownership in fee.

Under these circumstances, the Government's right to take is too clear to admit of quibbling about procedural detail on whether the district court abused its discretion in refusing to permit appellants to amend their notice of appearance. Certainly, there would be no such abuse if, as we show, the proposed amendment would not present a justiciable issue. We assume that appellants do not contest that the Congress of the United States was acting within its constitutional powers when it authorized the Corps of Engineers to construct the John Day Lock and Dam Project.[2/] Pub.L. 87-880, 76 Stat. 1216, 1217; Pub.L. 516, 81st Cong., 64 Stat. 163, 179, authorizing project

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2/ Appellants concede in their brief that "there is no doubt that the purposes of the John Day Dam include aid to navigation * * *" (Br. 37).

is detailed in H.Doc. No. 531, 81st Cong. (Cong. Doc. Ser. No. 11429). When this obvious fact is acknowledged, it settles the only justiciable issue in the case insofar as the right to take is concerned. The details of the execution of the constitutionally authorized project, such as how much land is needed, where the particular boundary lines are to be drawn or what estate or interest in the land taken is appropriate for the project, are questions which are not subject to judicial review. 3/ In one of the leading cases in this field, Berman v. Parker, 348 U.S. 26, 35-36 (1954), the Supreme Court holds that:

> It is not for the courts to oversee the choice of the boundary line nor to sit in review on the size of a particular project area. Once the question of the public purpose has been decided, the amount and character of land to be taken for the project and the need for a

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3/ There are a few cases which in dictum state a "bad faith" exception to the general rule. The question of whether there is such an exception has been discussed at great length in a recent Ninth Circuit case and will not be repeated here. See Southern Pacific Land Co. v. United States, No. 19882, now pending. A copy of this brief will be supplied appellants. It is sufficient for our present purposes to state that no appellate court has ever upheld a finding of bad faith by a government officer in the taking of land and, in absence of bribery, corruption, or other such gross malfeasance in office, no such exception exists. In any event, in this case the affidavit in support of appellants' motion (R. 32-33) alleges no facts even remotely indicating bad faith.

particular tract to complete the integrated plan rests in the discretion of the legislative branch. See Shoemaker v. United States, 147 U.S. 282, 298; United States ex rel. T.V.A. v. Welch, supra, 554; United States v. Carmack, 329 U.S. 230, 247.

In the Shoemaker case, which the Supreme Court cites, it is stated (147 U.S. at p. 298):

> The adjudicated cases likewise establish the proposition that while the courts have power to determine whether the use for which private property is authorized by the legislature to be taken, is in fact a public use, yet, if this question is decided in the affirmative, the judicial function is exhausted; that the extent to which such property shall be taken for such use rests wholly in the legislative discretion, subject only to the restraint that just compensation must be made.

In the planning, construction and operation of a proje such as the John Day Lock and Dam, there are an infinite number of details on engineering feasibility, financial cost to taxpaye economic effect on the community, public policy and others which are intricately interwoven to produce the administrative decisio on how much land should be taken or what estate should be taken. For example, in order to minimize severance damages and administrative costs, it has at various times been the policy of the

Corps of Engineers to take each 40-acre subdivision of a section of land where the full flood pool line covered any part of such 40-acre tract. See United States v. Crance, 341 F.2d 161, 162 (C.A. 8, 1965).

Indeed, in the present case, one may surmise that the administrative decision to condemn the entire fee ownership, rather than a flowage easement, and [redacted] to sell the surplus land not needed for the project to the State of Oregon was motivated by a desire to further the overall objectives and to reduce the cost of the entire project (R. 58). See Section 108, Pub.L. 86-645, 74 Stat. 480, 486, 33 U.S.C. sec. 578, which authorizes disposals of this type. In a similar situation, the Supreme Court said "In passing upon the authority of the T.V.A. we would do violence to fact were we to break one inseparable transaction into separate units. We view the entire transaction as a single integrated effort on the part of T.V.A. to carry on its congressionally authorized functions." United States ex rel. T.V.A. v. Welch, 327 U.S. 546, 552-553 (1946). And later in the same opinion the Court says, at page 554: "The cost of public projects is a relevant element in all of them, and the Government, just as anyone else, is not required to proceed oblivious to elements of cost."

This Court has expressed similar views in a river improvement project case where the taking was changed over the landowner's objections from an easement to a fee. Simmonds v. United States, 199 F.2d 305 (C.A. 9, 1952). In Simmonds this Court said (p. 306):

> Discretion regarding the acquisition of property by the exercise of the power of eminent domain, rather than by direct purchase, lies with any federal officer acting under the mandate of Congress. Congress has established as the standard for the exercise of discretion the "opinion" of an authorized official that condemnation would be "necessary or advantageous to the Government". [Italics ours] 40 U.S.C.A. § 257. In exercising its power to condemn, "the government, just as anyone else, is not required to proceed oblivious to elements of cost." United States ex rel. Tennessee Valley Authority v. Welch * * *. Therefore, where the statute which is being implemented contains Congressional authority to take property by eminent domain proceedings (here the River and Harbor Act), the officer authorized to act is under the duty of exercising his discretion as to the estate he elects to take. His discretion so exercised is subject to be attacked only for plain abuse or fraudulent action.

II

THE DISTRICT COURT CORRECTLY EXCLUDED PORT SITE VALUE AS AN ELEMENT OF COMPENSATION

This case again raises the often litigated issue of the nature of the public rights in a navigable body of water.

Specifically, where privately owned riparian lands are enhanced in value because they have access to the public waterway, and such lands are needed to improve the navigability of the stream, must the Government pay the increment in value added by the element of access? Stated in another way, how is the fact that the privately owned riparian lands carry with them no vested right of access to the navigable stream to be taken into consideration when determining just compensation?

Where the subject is riparian land on navigable streams, there are numerous cases which illustrate the limited nature of the private rights which a person can acquire in access to a navigable stream. The Supreme Court's latest pronouncement on this subject is as good a summary as may be found. United States v. Virginia Electric Co., 365 U.S. 624 (1961). The Court there said, at page 629:

> But though the Government's navigational privilege does not extend to lands beyond the high-water mark of the stream, the privilege does affect the measure of damages when such land is taken. In United States v. Twin City Power Co., 350 U.S. 222, we held that the compensation awarded for the taking of fast lands should not include the value of the land as a site for hydroelectric power operations. It was pointed out that such value, derived from

> the location of the land, is attributable in the end to the flow of the stream--over which the Government has exclusive dominion. 350 U.S., at 225-227. Thus, just as the navigational privilege permits the Government to reduce the value of riparian lands by denying the riparian owner access to the stream without compensation for his loss, United States v. Commodore Park, 324 U.S. 386, 390-391; Scranton v. Wheeler, 179 U.S. 141, 162-165; Gibson v. United States, 166 U.S. 269, 276, it also permits the Government to disregard the value arising from this same fact of riparian location in compensating the owner when fast lands are appropriated.

Although the Constitution does not grant property rights in a navigable stream to the Government, it does confer a power that "is a dominant one which can be asserted to the exclusion of any competing or conflicting one." United States v. Twin City Power Co., 350 U.S. 222, 224-225 (1956). Persons who have bought and sold riparian property have for many decades been consistently advised by the courts that they held their titles subject to this overriding power of the United States to improve navigability without payment of compensation for destruction of property rights in the bed of the stream or for denial of access to the stream. Washington Water Power Co. v. United States, 135 F.2d 541, 543 (C.A. 9, 1943).

In Gibson v. United States, 166 U.S. 269 (1897), an improvement for navigation of the Ohio River destroyed plaintiff's access to the channel of the River. The Court, in denying plaintiff compensation, said (p. 276):

> Moreover, riparian ownership is subject to the obligation to suffer the consequences of the improvement of navigation in the exercise of the dominant right of the Government in that regard. * * *
>
> In short, the damage [i.e., the denial of access] resulting from the prosecution of this improvement of a navigable highway, for the public good, was not the result of a taking of appellant's property, and was merely incidental to the exercise of a servitude to which her property had always been subject.

Numerous other cases since have held that a riparian owner has no compensable interest in his access to a navigable stream. Perhaps the leading case on this subject is United States v. Commodore Park, 324 U.S. 386 (1945), where the Court held (p. 391): "Riparian rights of access to navigable waters cannot, as against the government's power to control commerce, be bought and sold." At the same time, the Court reiterated the holding of Gibson v. United States, supra, that the riparian owner's

property "was always subject to" the Government's dominant ser tude. Ibid. As specifically applicable to the present case, the Court said, "In short, as against the demands of commerce, an owner of land adjacent to navigable waters, whose fast land are left uninvaded, has no private riparian rights of access the waters to do such things as 'fishing and boating and the like,' for which rights the government must pay." [Emphasis supplied.] If it be sought to distinguish Commodore Park because in the present case fast lands were invaded, the answer is that the owners have been allowed compensation for their la for all elements of value except their private riparian right access. It is for these rights that the Court in Commodore Pa says the Government need not pay. 4/

The basic teaching of these cases is the owner of la riparian to a navigable stream does not have, as against the United States, a right to the continuation of that stream in i

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4/ In Commodore Park, the Court recognized that the claimant owned the bed of the stream under Virginia law (324 U.S. a p. 390) but that gave him no right to compensation because of the Government's improvements.

tural state. Consequently there is no right to recover--as to the taking of a vested right--when that natural condition is altered. See also: Borough of Ford City v. United States, 345 F.2d 645, 647 (C.A. 3, 1965); City of Demopolis, Ala. v. United States, 334 F.2d 657 (C.Cls. 1964); City of Eufaula, Ala. v. United States, 313 F.2d 745 (C.A. 5, 1963).

The most recent pronouncements of the Supreme Court have shown that when the fast lands of the riparian owner are taken by eminent domain, those elements of value attributable to the location of the fast lands on a navigable stream both can and must be excluded in determining fair market value. United States v. Twin City Power Co., 350 U.S. 222 (1956); United States v. Virginia Electric Company, 365 U.S. 624 (1961). Those cases are controlling on the present case, and were correctly relied on by the district court to exclude evidence of port site value for the land here condemned (R. 38-39).

Appellants attempt to distinguish Twin City and Virginia Electric Co. factually because they involve hydroelectric sites rather than port sites (Br. 22 et seq.). One is reminded of the concurring opinion of Mr. Justice Douglas in Silverman v. United States, 365 U.S. 505, 512 (1961): "My trouble with stare decisis

in this field [invasion of privacy] is that it leads us to a matching of cases on irrelevant facts." Whether the value is for a port site or a hydroelectric site, both are due to location of the fast land next to a navigable stream, the access to which depends solely on the Government. "What the Government can grant or withhold and exploit for its own benefit has a value that is peculiar to it and that no other user enjoys." United States v. Twin City Power Co., supra, at p. 228. This logic applies equally to both potential uses.

In the same attempted distinction, appellants make much of the use of such words as "moving water" and "power in the flow." These phrases and ideas occur quite naturally in an opinion discussing hydroelectric dam sites. But it is surely not correct that whether the United States pays location value for fast lands next to a navigable stream depends on whether the current of the stream is moving or quiescent.

Next, appellants attempt to distinguish Twin City and Virginia Electric on the ground that there were fewer contingencies in using the land here condemned as a port site than there were in using the land in those cases as hydroelectric sites

Br. 23). It is true that a proposed use of land may be so contingent or speculative or remote that value for such proposed use must be excluded in determining just compensation. United States ex rel. T.V.A. v. Powelson, 319 U.S. 266, 275 (1943); Olson v. United States, 292 U.S. 246, 256 (1934); Continental Land Co. v. United States, 88 F.2d 104, 110 (C.A. 9, 1937), cert. den., 302 U.S. 715. However, that rule was not controlling in either Twin City or Virginia Electric. To the contrary, in Virginia Electric the agricultural value which the Supreme Court allowed was to be based "'on the probability or improbability of actual exercise of the [flowage] easement by the . . . Power Company or its assigns.'" 365 U.S. at p. 635.

Appellants also attempt to distinguish the present case from Twin City and Virginia Electric because the federal statutory requirements for erection of hydroelectric dams on navigable rivers are different from statutes governing the building of ports (Br. 23 et seq.). Neither the Twin City nor Virginia Electric opinion is founded on any such ground. We are concerned here, however, with the measure of just compensation required by the Fifth Amendment, not with the extent that Congress has exercised its power over interstate commerce by enactment of statutes.

Irrespective of the statutory scheme which Congress has construc ed for either sort of facility, its plenary power over both is co-extensive and derives from the same constitutional authority to regulate commerce with foreign nations and among the several states. Indeed, since port sites are more directly connected with fostering navigation than dam sites, it could be argued that Congress has the greater degree of control over port sites, rather than vice versa as appellants argue.

Finally, appellants argue that, as in United States v. Gerlach Livestock Co., 339 U.S. 725 (1950), it was the intent of Congress to pay compensation regardless of whether any was owing pursuant to the constitutional mandate (Br. 36-43). Appellants base this argument principally on Section 1(b) of the Act of December 22, 1944, 58 Stat. 887, 889, 33 U.S.C. sec. 701-1(b), which states in substance that it is the policy of Congress in exercising jurisdiction over the Nation's rivers that the use of water for navigation west of the 98th meridian shall only be sub use as does not conflict with domestic, municipal, stock water, irrigation, mining or industrial uses. Assuming that this statu tory provision is applicable to the present project, 5/ the relev

5/ See Section 202, Act of May 17, 1950, 64 Stat. 170.

f the provision to the issue of whether the United States should ay for port site value is not readily apparent.

Also not clear are the relevance of the several sections of the Submerged Lands Act of 1953, 67 Stat. 29, 43 U.S.C. ec. 1301 et seq., on which appellants rely as "reinforcing" the ct of December 22, 1944, supra. The purpose of the Submerged ands Act was to establish proprietary title to the states and heir grantees of certain lands beneath navigable waters. The ecord in this case does not indicate that the land condemned ere involves title which was transferred by the Submerged Lands ct. That Act does not purport to change the measure of compenation to be paid for any lands other than those transferred. nsofar as the Government's rights under the Navigation Servitude nd the Commerce Clause are mentioned, it is directly contrary o appellants' contention. That Act expressly provides that (Sec. , 67 Stat. 32, 43 U.S.C. sec. 1314(a)):

> The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership * * *.

Thus, instead of indicating a congressional policy to pay for the exercise of the navigational servitude as appellants argue, the expressed intent is to the contrary to retain all its rights and powers in navigable waters. There is completely lacking here any of the long administrative history explicitly related to the specific project such as was involved in United States v. Gerlach Livestock Co., 339 U.S. 725 (1950). There is therefore absolutely no basis for saying that Congress intended to treat the riparian owners in this case differently from any other riparian owners, or for granting to them a waiver of federal rights. Cf. United States v. Grand River Dam Authority, 363 U.S. 229, 235 (1960).

CONCLUSION

For the above reasons, the judgment of the district court is correct and should be affirmed.

Respectfully submitted,

EDWIN L. WEISL, JR.
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OCTOBER 1965

CERTIFICATE OF EXAMINATION OF RULES

I certify that I have examined the provisions of Rules 18 and 19, C.A. 9, and that in my opinion the tendered brief conforms to all requirements.

A. DONALD MILEUR
Attorney, Department of Justice
Washington, D. C., 20530

APPENDIX A

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL NO. 63-380
JAMES FOX, et al., Defendants,	)	N O T I C E

TO: James Fox, Emma Fox, George L. Fox, Lucile H. Fox, A. H. Harding, Esther E. Harding, H. G. Gosney, doing business as Umatilla Sand and Gravel Company, George Shane, R. B. Rands, Josephine Rands, Ferdinand Emberger, Jane Doe Emberger, Royal H. Rands, Louise Rands, West Extension Irrigation District, Northern Pacific Railway Company, Fannie Slevin, Clyde Hoyt, Nellie Hoyt, James F. McMillin, Madeline McMillin, Robert Hoyt, Thula Hoyt, Marvin Simmons, Norma J. Simmons, State of Oregon, Gilliam County, Morrow County, Sherman County, and Umatilla County, Oregon:

You and each of you are hereby notified that a complaint in condemnation has heretofore been filed in the office of the Clerk of the above named Court in an action to condemn the fee simple title, subject, however to existing easements for public roads and highways, public utilities, railroads and pipe lines, in and to the land more particularly designated and described in Exhibit "A" hereto attached and by this reference made a part hereof.

The authority for the taking is:

Act of February 26, 1931 (46 Stat. 1421, 40 U.S.C., 258a), and acts supplementary thereto and amendatory thereof;
Act of April 24, 1888 (25 Stat. 94, 33 U.S.C., 591);
Act of March 1, 1917 (39 Stat. 948, 33 U.S.C., 701);
Act of May 17, 1950 (Public Law 516, 81st Congress);
Act of October 24, 1962 (Public Law 87-880);

You are further notified that if you have any objection r defense to the taking of your property you are required to erve upon plaintiff's attorneys at the address herein designated ithin twenty days after personal service of this notice upon you, xclusive of the day of service, an answer identifying the prop- rty in which you claim to have an interest, stating the nature nd extent of the interest claimed and stating all your objections nd defenses to the taking of your property. A failure so to erve an answer shall constitute a consent to the taking and to he authority of the Court to proceed to hear the action and to ix the just compensation and shall constitute a waiver of all efenses and objections not so presented.

You are further notified that if you have no objection r defense to the taking of your property you may serve upon

plaintiff's attorneys a notice of appearance designating the property in which you claim to be interested, and thereafter you shall receive notice of all proceedings affecting the said property.

You are further notified that trial by jury of the issue of just compensation is demanded by plaintiff. At the trial of the issue of just compensation whether or not you have previously appeared or answered, you may present evidence as to the amount of compensation to be paid for the taking of your property and you may share in the distribution of the award.

Dated at Portland, Oregon, this 13th day of August, 196

JOSEPH E. BULEY
Assistant United States Attorn